

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JAMES DAVIS,

Plaintiff,

-v-

9:17-CV-842  
(DNH/DJS)

ANNETTE M. BOYD, Registered Nurse; Auburn  
Correctional Facility; ANTHONY D. VOLPE,  
Correctional Officer/Sergeant, Auburn  
Correctional Facility; ANTHONY T. TURO,  
Correction Officer, Auburn Correctional Facility;  
CASEY R. GALBALLY, Correctional Officer,  
Auburn Correctional Facility; JASON A. EICH,  
Correction Officer, Auburn Correctional Facility;  
JOSEP L. VASILE, Correction Officer, Auburn  
Correctional Facility; KEITH E. VINCENT,  
Correction Officer, Auburn Correctional Facility;  
JHON BOYNTON, first name unknown,  
Correction Officer, Auburn Correctional Facility;  
JHON DUMONT, first name unknown,  
Correctional Officer, Auburn Correctional  
Facility; and JHON PLUMMER, first name  
unknown, Correction Officer, Auburn  
Correctional Facility,

Defendants.

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APPEARANCES:

James Davis  
Plaintiff pro se  
04-A-2072  
Upstate Correctional Facility  
P.O. Box 2001  
Malone, NY 12953

HON. LETITIA JAMES  
Attorney General for the State of New York

TIMOTHY P. MULVEY, ESQ.  
Ass't Attorney General

Attorney for Defendants  
615 Erie Boulevard West  
Suite 102  
Syracuse, NY 13204

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

Pro se plaintiff James Davis brought this civil rights action pursuant to 42 U.S.C. § 1983. On January 3, 2019, the Honorable Daniel J. Stewart, United States Magistrate Judge, advised by Report-Recommendation that defendant Boyd's motion for summary judgment be denied. No objections to the Report-Recommendation have been filed.

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

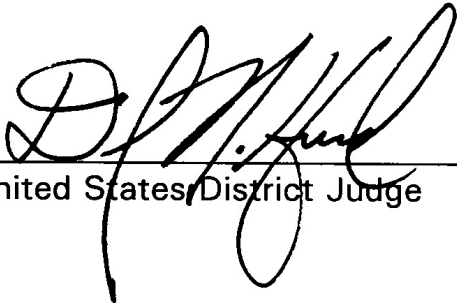
Therefore, it is

ORDERED that

1. Defendant Annette M. Boyd's motion for summary judgment is DENIED;
2. The following claims remain for trial: (1) an Eighth Amendment failure to protect claim against defendant Volpe; (2) an Eighth Amendment excessive force claim against defendants Volpe, Turo, Galbally, Eich, Vasile, Boynton, Dumont, Vincent, and Plummer; and (3) an Eighth Amendment deliberate indifference claim against defendant Boyd;
3. Trial in this matter is scheduled for October 8, 2019, in Utica, New York with pre-trial submissions due at noon on or before September 24, 2019; and

4. Plaintiff's previous request for the appointment of pro bono trial counsel is considered renewed and is GRANTED and that assignment will be made.

IT IS SO ORDERED.



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United States District Judge

Dated: February 13, 2019  
Utica, New York.